

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – CENTRAL VALLEY REGIONAL WATER BOARD
APRIL 2, 2019**

ITEM 2

SUBJECT

CONSIDERATION OF A PROPOSED RESOLUTION TO AUTHORIZE USE OF SUPPLEMENTAL ENVIRONMENTAL PROJECT (SEP) FUNDS FOR SACRAMENTO-SAN JOAQUIN DELTA REGIONAL MONITORING PROGRAM (RMP) PROJECTS.

DISCUSSION

The revised *Policy on Supplemental Environmental Projects* (Policy), adopted on December 5, 2017, authorizes the State Water Resources Control Board (State Water Board) and nine Regional Water Quality Control Boards to allow dischargers to satisfy part of any monetary assessments imposed through administrative civil liability orders arising out of settlements (Stipulated ACLOs) by completing or funding one or more SEPs. The Policy allows the State Water Board to authorize use of SEP funds for Delta RMP projects, subject to possible conditions. This Resolution would authorize the Central Valley Regional Water Quality Control Board (Regional Water Board) to direct SEP funds to its Delta RMP for vetted, but unfunded, studies (Delta RMP SEPs) that dischargers within the Region are not otherwise legally required to perform. Specifically, it would (1) approve Delta RMP SEPs without commitments to address study findings, (2) authorize Delta RMP SEPs that do not strictly comply with the Policy's "specific project" requirements, but only when the payments are associated with Stipulated ACLOs imposing mandatory minimum penalties (MMPs) under Water Code section 13385 and discretionary penalties less than \$100,000, and (3) allow the Regional Water Board to release a settling party's obligation to complete a Delta RMP SEP upon proof of payment to the Delta RMP.

The Delta RMP is a collaboration between the Regional Water Board, State Water Board, Resource Agencies, U.S. EPA, and the Aquatic Science Center and the regulated discharger community. Delta RMP participants pay annual fees to comply with permit requirements. The Delta RMP collects data on estuarine contaminants and communicates information about Sacramento-San Joaquin Bay Delta water quality targeted at the highest-priority water quality management decisions. The Delta RMP documents its activities on its website and in an annual workplan, technical reports, and scientific publications.

The Delta RMP employs a stakeholder-driven process that prioritizes key management questions and associated scientific investigations. Committees and workgroups meet regularly and work toward consensus to focus on the highest priority issues and to ensure that RMP science is sound. The Delta RMP governance structure is comprised of a Steering Committee, Technical Review Committee, and workgroups. The Delta RMP Steering Committee allocates available funds to projects vetted through a transparent decision-making process. Core funds cover monitoring far more robust than could be required through individual permits; however, many worthwhile projects cannot be funded with existing resources. Delta RMP SEPs can fill some funding gaps.

All Delta RMP SEPs would have a geographic nexus with the alleged violation(s) resolved through settlement. A geographic nexus exists if the alleged violation(s) occurred in the legal Delta (as defined by California Water Code section 12220) or in a surface water connected to the Delta where adverse impacts to Delta water quality are reasonably foreseeable.

For larger settlements of discretionary enforcement actions (Stipulated ACLOs imposing discretionary penalties of \$100,000 or more), Delta RMP SEPs would fund, or augment existing funding for, specific studies with a geographic nexus. For much smaller settlements (Stipulated ACLOs imposing MMPs or discretionary penalties under \$100,000), SEP funds would be assigned to Delta RMP projects with a geographic nexus as funds become available. The Delta RMP account would aggregate separate smaller settlement payments to fund larger, more useful projects. The San Francisco Estuary Institute, the administrative agency for the Aquatic Science Center and fiduciary agent for Delta RMP funds, would track SEP fund contributions and expenditures separately from its base participant funds. In its financial reports, the Delta RMP would itemize SEP funds and expenditures by each SEP funder and project.

POLICY ISSUES

In accordance with Policy section VIII.H, the Resolution would authorize a Delta RMP account and Delta RMP SEP program that does not strictly comply with the requirements of Policy sections V.E., VI(2), VI(3), or IX.A. Consistent with Policy section A, strict application of these Policy requirements would be inappropriate under these circumstances, and the Delta RMP account and Delta RMP SEP program would substantively achieve the intent of the Policy.

The Resolution would approve Delta RMP SEPs under Policy section V.E without commitments to address study findings. Measures to address Delta RMP study findings are unnecessary because Delta RMP projects have broad programmatic benefits and do not involve investigating discharge-specific problems that might require cleanup.

The Resolution would authorize Delta RMP SEPs that do not strictly comply with the “specific project” requirements of Policy sections VI(3) and IX.A when the payments are associated with Stipulated ACLOs imposing MMPs under Water Code section 13385 and discretionary penalties under \$100,000. Payments associated with these smaller settlements are typically too small to fund meaningful “specific projects” on their own. Allowing the SEP funds to aggregate will facilitate larger, more meaningful scientific work.

The Resolution would allow the Regional Water Board to release a settling party's obligation to complete a Delta RMP SEP upon proof of payment to the Delta RMP pursuant to Policy section VIII.E, thus simplifying SEP administration and removing a barrier to timely settlement. The Delta RMP has a well-established record of reliably completing all funded projects. The Delta RMP also maintains a contingency fund in the event that SEP funds might prove insufficient to complete a project.

FISCAL IMPACT

The fiscal impact of the Resolution would be minimal. However, it would simplify SEP administration and remove a barrier to timely settlement, thereby somewhat reducing Regional Water Board costs.

REGIONAL BOARD IMPACT

Yes. The Resolution would affect only the Central Valley Regional Water Board.

STAFF RECOMMENDATION

Staff recommends Resolution approval.